

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2728 of 1982

with

SPECIAL CIVIL APPLICATION No 7691 of 1990

7692/90, 7693/90, 7694/90, 7695/90, 7696/90, 7697/90,
8600/90 and 8601/90.

Date of decision: 17-6-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BELLVIEW ASSOCIATES

Versus

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Appearance:

1. Special Civil Application No. 2728 of 1982
MR GN SHAH for Petitioner

MR HAROOBHAI MEHTA for Respondent No. 1

SERVED for Respondent No. 2, 3

2. Special Civil Application No 7691 of 1990

MR GN SHAH for Petitioner

GOVERNMENT PLEADER for Respondent No. 1

SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/06/97

ORAL JUDGEMENT

All these special civil applications proceed on common facts and grounds and challenge is made to the one order of the Taluka Development Officer, Daskroi, therefore, these are disposed of by this common order.

2. Learned counsel for the petitioners Shri G.N. Shah raised several contentions, but I do not consider it necessary to advert to all those contentions as in my opinion these writ petitions deserve to be accepted only on the ground that the order impugned in these special civil applications have been passed without any notice or opportunity of hearing to the petitioners.

3. Learned counsel Mr. S.R.Divetia very fairly conceded that the order impugned in these special civil applications has been made without notice or opportunity of hearing to the petitioners.

4. Under the orders, reference to which has been made in the impugned order dated 5-6-1982, nonagricultural permission for residential purposes was granted in respect of Block Nos.372, 379, 380, 381, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 398, 399 and 422 situated in the sim of village Lapkaman. After this N.A. permission was granted, the Gram Panchayat, vide its Resolution dated 15-8-1981 accorded sanction to make construction to the holders of the blocks. It appears that the District Development Officer, District Panchayat, Ahmedabad, asked the Taluka Development Officer concerned to make inquiry in connection with the construction which has been started by the holders of those blocks. It also appears that Capt. K. A. Hariharan, Group Commanding Officer, Air Force, Vadsar, District Mehsana, addressed letter No.A.F.W. 271-WKS-W-271-WKS dated 21-4-1982 enclosing

therewith confidential letter No.2/9/65/D.F.2nd Dt. 4-7-1966, of the Ministry of Defence drawing attention towards the said letter, intimated to the effect that any construction going on within the area falling within 900 metres from the limits of Vadsar Air Force Station of Air Force should be stayed forthwith. It further transpires from the impugned order that the District Development Officer, Ahmedabad, vide letter dated 2-6-1982 has issued instructions to the concerned officer to stop the construction. Referring to the letter of the Group Captain, Commanding Officer, Air Force Station, Vadsar, District Mehsana, the Taluka Development Officer passed impugned order and the owners and occupants of the land were restrained from making construction of any type whatsoever or to make use of the said land otherwise than for agricultural use till further orders. Under the impugned order occupiers and owners of the land were restrained only from raising any construction, and further it was directed to make use of the said land only for agricultural purpose. The N.A. permission which has been granted earlier has not been revoked under the impugned order, but only temporary injunction has been issued. So it is not correct on the part of the petitioners to say that the order of grant of N.A. permission has been reviewed under the impugned order by the T.D.O. That order has been passed till further orders inasmuch as the final order for cancellation of N.A. permission has not been passed. Learned counsel for the Union of India contended that while granting nonagricultural permission for construction of building and other structures in the vicinity of the Airforce installation, the guidelines issued by the Government of India under letter dated 24th August, 1982 have to be followed, which has not been done in the present case. It has further been contended that the construction within the area of 900 metres of the Air Force Installation is not permissible. As stated earlier, on the short ground of noncompliance of principles of natural justice, the writ petitions are to be accepted; and I do not consider it proper to go into these questions raised by the counsel for the Union of India. The Taluka Development Officer has not given any notice to the petitioners for review of the order of grant of N.A. permission. Otherwise also, I fail to see any justification in the order passed by the Taluka Development Officer issuing temporary injunction. The matter is still open to the respondents to raise all objections before the Taluka Development Officer when he considers the matter afresh. The impugned order has been made in violation of the principles of natural justice and the same cannot be allowed to stand.

5. In the result all these special civil applications succeed and the same are allowed. The impugned order dated 5-6-1982 is quashed and set aside. The counsel for the respondents submitted that till the matter is decided afresh by the Taluka Development Officer, the petitioners should be restrained from raising construction as the lands are within the near vicinity of Airforce installations. The counsel for the petitioner very fairly submitted that the petitioners will not raise construction till the matter is decided afresh but a time bound programme may be fixed so that the matter may not be lingered on by the concerned authority. I find sufficient justification in this prayer of the counsel for the petitioners. The Taluka Development Officer is directed to decide the matter regarding review of his earlier order granting N.A. permission in favour of the petitioners after hearing all concerned parties, within a period of three months from the date of receipt of the writ of this order. Till the matter is decided by the T.D.O. the petitioners shall not make any construction on the land in question, and shall maintain the status quo. It is made clear that all the parties are at liberty to produce all evidence oral as well as documentary in support of their respective cases. It is expected of the officer concerned to pass a reasoned order, whether the order is made in favour or against the petitioners. Rule made absolute in all these special civil applications in the aforesaid terms. No order as to costs.

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